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The Risks of Semi-Presidentialism in Emerging Democracies

By Noah Feldman and Duncan Pickard

The most fundamental unresolved question in the National Constituent Assembly's rough draft of the Tunisian constitution is the division of power between the president and prime minister. The committee drafting the chapters on the executive branch encountered deadlock and, in the rough draft, listed two options for most substantive articles. The committee will now seek consensus on single draft, though a final decision likely will be made in a plenary session of the Assembly.

Both options out of the committee call for a dual-executive system with a president and prime minister. The most significant difference between the two options is that the first calls for the legislature to elect the president of the republic, while the second stipulates a direct presidential election (with runoff if no majority on the first ballot). The president in Option 2 is more powerful than the first, but not extremely so. Under Option 2, the president can dissolve the parliament (normally elected every five years), but under both options, the president must select the prime minister from the ruling coalition in parliament.

The specific powers of both executives in each option are similar, with some variation in authority to issue emergency decrees, propose legislation, manage the government, and other areas. (In fact, the delineation of powers is quite vague and should be clarified.) But the choice as it stands now essentially is between a parliamentary system with a president and a prime minister elected from the same governing coalition (Option 1), or a stronger, directly elected president in a semi-presidential system (Option 2).

Recent literature in comparative politics identifies several potential risks to the success of democracy in parliamentary and semi-presidential systems. We summarize them here, and we conclude that Tunisia is characteristic of emerging democracies that are poorly suited to semi-presidentialism.

Executive systems can be divided into three types: parliamentarism, presidentialism, and semi-presidentialism. Parliamentarism and presidentialism are opposites. *Parliamentarism* (parliament selects the head of government) is a system of *mutual dependence* between the executive and the legislature: governments remain in power through legislative support. *Presidentialism* (legislature and president are elected separately; president is head of state and head of government) is a system of *mutual independence*: the legislative and executive powers have separate and fixed roles. The system revolves around potential tensions between presidential and legislative legitimacy. *Semi-presidentialism* calls for a mix of both models, where the head of state is an elected president with a fixed term in office and the head of government is a prime minister elected by the legislature.¹

¹ Cindy Skach, *Borrowing Constitutional Designs* (Princeton: Princeton University Press, 2005), 13.

Tensions between the president, prime minister, and legislature are inherent in semi-presidentialism — the system outlined in Option 2. But a legislative majority and a friendly relationship between the president and that majority can minimize the probability that these tensions will create a serious institutional conflict. To better understand the potential for conflict, Cindy Skach breaks *semi-presidential* systems into three types:

- Consolidated majority government, where the president and prime minister have the same majority in the legislature;
- Divided minority government, where the prime minister has the majority in the legislature and the president does not; and
- Divided minority government, where neither the president nor the prime minister has a majority in the legislature.

The most volatile subtype of semi-presidentialism, Skach argues, is *divided minority government*, where the prime minister and president represent different parties and neither can win the support of the legislature. Executive power is effectively frozen for the length of the president's term or until new legislative elections, with the prime minister and president constantly butting heads and the legislature vetoing decisions made by both.²

Legislative majorities in semi-presidentialism can avoid divided minority government. We can assess the likelihood of divided minority government by looking at whether political parties have the tools to build legislative majorities. Skach identifies three important factors of a party system that can produce stable legislative majorities:

1. A strong system of political parties;
2. An electoral system that tends to reduce the total number of parties; and
3. Party presidents that are integrated into and fully supported by their political parties.³

Tunisia does not have any of these characteristics. Many of Tunisia's political parties are fracturing. Two of the largest political parties — the former Progressive Democratic Party (PDP) and the Congress for the Republic (CPR) — have split into warring factions, and several Assembly members on Ettakatol lists have begun to caucus with other parties. Ennahdha is the exception, with a strong base of support and deep party loyalty among its members. But Ennahdha itself recently only 40 percent of the popular vote and may not win an outright majority in a parliamentary election. Ennahdha will then have to enter into another coalition government with weak partners, much like they did with the current “Troika” coalition of CPR and Ettakatol.

The second and third characteristics fan the flames of the first: an electoral law with a low seat threshold and party presidents that are increasingly unpopular with their bases. (Again, Rached Ghannouchi of Ennahdha is the important exception.) The political and legal context in Tunisia makes

² Skach, 18–19.

³ Skach, 21–29.

it difficult for parties to build a legislative majority, increasing the likelihood of divided minority government under a semi-presidential system like Option 2.

The problems facing political parties in Tunisia are common in many young democracies, especially those emerging from decades of authoritarian rule that restricted political rights. The theory that Skach lays out is consistent with empirical evidence of semi-presidential regimes. Robert Elgie finds that, since the emergence of semi-presidential in the twentieth century, twenty-two governments have tried semi-presidentialism — and nearly three-quarters have failed to create a stable democracy.⁴

The fact that the president in Option 2 is directly elected could exacerbate the problems of a divided minority government. The president would be the victor of the country's only national election, making her or him the only politician in Tunisia with a national mandate. The president still is, however, required to nominate the prime minister from the governing coalition. If that coalition does not include the president's party, both the prime minister and president would have strong claims to wresting decision-making power from the other — one rooted in the procedural legitimacy of the constitution, the other in popular will.

One argument for semi-presidentialism is that two executives can check the power of the other, preventing the reemergence of authoritarianism. But the prime minister in Option 1 still answers to the parliament. Besides, the rest of the constitution should spell out a balance of powers that can check all three branches of government. Having two executives is redundant and can create gridlock, not efficient oversight. Duly selected leaders should garner the confidence of voters at least until their mandate runs out. They should be given the opportunity to lead.

A parliamentary system provides for pluralistic rule without the same potential for disputes in semi-presidentialism. Parliamentary systems can even include the direct election of a president to serve as head of state or coordinate some limited areas of policy, such as international affairs. The presidents of Austria, Bulgaria, Finland, Iceland, Ireland, Portugal, Slovenia, and Slovakia all are directly elected but have very limited power.

It is important for Tunisians inside and outside the Bardo Palace to place the debate over executive powers in the context of the rest of the constitution. The choice has implications on other draft articles. For example, will the new supreme court have the authority to rule on disputes between the prime minister and president? By what standard will the courts define an encroachment of one executive's authority over the other's? If a national presidential election is called, should the constitution guarantee the right to vote on all elections or just parliamentary elections, as is currently the case? The National Constituent Assembly should take a holistic view of the impact of executive powers on the constitution, not just choose between Option 1 and Option 2.

⁴ Robert Elgie, "Varieties of Semi-Presidentialism and Their Impact on Nascent Democracies," *Taiwan Journal of Democracy* 3.2 (December 2007).

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